IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1835 of 1999
with
LETTERS PATENT APPEAL No 1836 of 1999
with
LETTERS PATENT APPEAL No 1841 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-

MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO NO

5. Whether it is to be circulated to the Civil Judge? : NO NO

GOHEL SUNIL DEVSHI

Versus

STATE ELECTION COMMISSION

Appearance:

1. LPA No 1835 of 1999
MR PM THAKKAR for the Appellant
MR KG VAKHARIA with MR TUSHAR MEHTA
for the Respondent
MR NV ANJARIA for the STATE ELECTION COMMISSION
MR PG DESAI GP for the STATE OF GUJARAT

2. LPA No 1836 of 1999
MR HL PATEL for the Appellants
MR KG VAKHARIA with MR TUSHAR MEHTA for the Respondent No.1
MR NV ANJARIA for the STATE ELECTION COMMISSION

3. LPA No 1841 of 1999
MR PG DESAI GP for the Appellant
MR MR KG VAKHARIA with MR TUSHAR MEHTA for the Respondent No.1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE D.H.WAGHELA
Date of decision: 30/12/1999

ORAL JUDGEMENT (Per R.K.Abichandani, J.)

All these appeals involve common questions and have been argued together. They are directed against the decision of the learned Single Judge rendered on 23.12.1999 in Special Civil Application No.10037 of 1999 and Special Civil Application No.10041 of 1999 dismissing the petitions and vacating the mandatory interim relief by restoring status quo ante. The petitioners have challenged the order dated 8.12.1999 of the Election Commission by which the candidates who had filled in their nominations purporting to be candidates set up by a recognized political party were required to furnish the requisite letter evidencing that fact by 3.00 p.m. on the date of filing of the nomination papers. As per the programme which was announced by the Election Commission on 6.12.1999, the last date for submitting nomination papers was 13.12.1999. The date of scrutiny was 15.12.1999 and the date for withdrawing the nomination was 17.12.1999. The last date of voting was 2.1.2000 which has been later changed to 7.1.2000. According to the petitioners, as per that programme, in view of the Explanation 2 to Rule 15 of the Gujarat Municipalities (Conduct of Elections) Rules, 1994, a candidate set up by a recognized political party could produce a letter to that effect signed by the President of the State Unit of that party in Gujarat or any other person authroised by him in that behalf before 17.12.1999 being the last date for withdrawal of nominations specified as per Rule 11. There has not been any change made in the last date of withdrawal fixed under the notification. It is therefore contended that the direction of the Election Commission requiring the petitioners to furnish the letter to show that they are party candidates before the date of

withdrawal of nominations violated the statutory provisions of Explanation 2 of Rule 15. It was argued that in issuing instructions contrary to the statutory provisions of Rule 15, even if they were to be for the sake of convenience of the office of the State Election Commission, it had acted without jurisdiction and therefore this was a proper case where the High Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

2. The learned Single Judge applying the ratio of the decisions of the Supreme Court in ANURAGH NARAIN SINGH v. STATE OF U.P. reported in (1996) 6 SCC 303 and UMESH SHIVAPPA AMBI v. ANGADI SHEKARA BASAPPA reported in AIR 1999 SC 1566 found that the challenge to the mandate contained in the letter dated 8.12.1999 issued by the State Election Commission could not be examined in these petitions under Article 226 of the Constitution of India and that such a challenge could appropriately be made in an election petition that may be filed under Section 14 of the Gujarat Municipalities Act, 1963.

3. It has been pointed out that there has been an amendment of Rule 7 (2) by which a proviso has been added to the following effect:

> "(2) Every nomination shall contain full particulars of the name, age, sex and address of the candidate, be subscribed by two persons -one as the proposer and the other as the seconder -who are entitled to vote at the election to that ward and whose names are included in the List of Voters for that ward and must bear the signature of the candidate in token of his willingness to be so nominated.
>
> Provided that a candidate not set-up by a recognized political party shall not be deemed to be duly nominated for election from a ward unless the nomination paper is subscribed by ten proposers and ten seconders being electors of that ward"

There is no dispute about the fact that earlier on the date of scrutiny of candidates, whether set up by a political party or not, the numbers of proposers and seconders were uniform. The aforesaid proviso has brought about a significant change and at the time of scrutiny, the Returning Officer has to examine the nomination papers keeping in view the requirements under the added proviso. It is after the scrutiny is done

under Rule 8 that the validly nominated candidates can be classified under Rule 9. Since the earlier requirement of proposer and seconder was uniform in case of both types of candidates, the nomination papers could have been rejected for want of proposer and/or seconder, in either case, and if it were a case of a candidate set up by a recognized political party, there would be no occasion to wait for such a candidate to produce the letter before the date of withdrawal of nominations specified under Rule 11 in accordance with the Explanation to Rule 15. In other words, if the candidate set up by a political party had filed a nomination which either did not have a proposer and/or seconder or that the proposer and/or the seconder were not acceptable legally on the basis of the objections at the scrutiny, and the nomination had been rejected on the date of scrutiny, then, there will be no occasion for such a candidate who had not earlier produced the letter to produce it thereafter because in that case, there remains no question of withdrawal of nomination by such candidate whose nomination was rejected on scrutiny under Rule 8. However, a different position has now obtained in view of the proviso to Rule 7 (2), under which if by the date of scrutiny there was no letter produced to show that the candidate was set up by a recognized political party, then the proviso to Rule 7 (2) might hit such candidate on the ground that there were no sufficient number of proposers and seconders. After this proviso is added, to some extent the operation of the Explanation to Rule 15 becomes doubtful because if the candidate chooses to wait till the last date of withdrawal for producing his letter, he faces the risk of his nomination being considered in light of the proviso to Rule 7 (2). With a view to meet with this incongruity, the Election Commission appears to have issued instructions requiring such candidates to produce their letters by the last date of acceptance of the nomination papers i.e. 13.12.1999. The Election Commission by virtue of the provisions of Article 243-ZA read with Article 243-K is named as the constitutional authority for the purpose of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the municipalities. If the State Election Commission has acted in exercise of its powers of conducting the election by trying to solve the congruity brought about by the inconsistency between the proviso to Rule 7 (2) and the Explanation to Rule 15, it cannot be said that it had acted without jurisdiction. Therefore, there is no ground for interference with the impugned directions of the State Election Commission on the ground that they are without jurisdiction and ultra vires.

4. Under Article 243-ZG, there is a bar to interference by Courts in electoral matters and it is, inter alia, provided that, notwithstanding anything in this Constitution, no election to any municipality shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made by the Legislature of a State. It will be noticed from the provisions of Section 2 (7A) of the said Municipalities Act that "election" means and includes the entire election process commencing from the division of wards and all stages culminating into election of a councillor and it is always deemed to have meant and included the entire election process as aforesaid. The words "election to municipality" occurring in Article 243-ZG would obviously embrace the election stage with which we are concerned in these matters. In ISMAIL NOORMOHMAD MEHTA v. STATE OF GUJARAT reported in 1995 (2) G.L.H. 563, while applying the provisions of Clause (b) of Article 243-ZG, it was held that no election to any municipality can be called in question except by an election petition. This provision overrides any other provision of the Constitution and therefore where the provisions are made by the State Legislature for an election petition, the ambit of challenge against the election to a municipality is circumscribed by the provisions of such law made by the State Legislature. Section 14 of the Gujarat Municipalities Act provides for determination of validity of election and lays down that the validity of any election of a Councillor can be brought in question at any time within 15 days after the date of declaration of result of the election by making an application to the District Court for the determination of such question and the Judge may, after such inquiry as he deems necessary, pass an order confirming or amending the declared results of the election or set aside the election. Thus, the State Legislature has provided for filing of an election petition in which election to any municipality can be called in question. Under Section 14 (5) (a) (iii), if the Judge is satisfied that any nomination has been improperly rejected, the election of the elected candidate can be set aside. In ANUGRAH NARAIN SINGH v. STATE OF U.P. reported in (1996) 6 SCC 303, the Supreme Court while construing the provisions of Article 243-ZG held that, in terms of the said provision, there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election and that no election to a municipality can be questioned except by an election petition. It was

held that, it was well settled by now that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the court and stall the elections.

5. It is thus obvious that this Court cannot at this stage interject in the election process and it will be open for the petitioners to raise their contentions in an appropriate election petition if they choose to file one. In this view of the matter, we find no valid ground for interfering with the decision of the learned Single Judge and all these appeals are dismissed with no order as to costs. We make it clear that any observation made in this order as regards the powers of the State Election Commission or the validity of the directions that it has issued will not preclude the petitioners from raising their contentions against the validity of election before an appropriate forum in accordance with law.

Sd/-

(KMG Thilake)